RECENT IMPORTANT DECISIONS.

ADVERSE POSSESSION—ACTUAL POSSESSION—OCCUPATION OF PART.—In an action of ejectment for the recovery of 320 acres of land it appeared that the defendant had been in actual adverse possession of 20 acres thereof for the statutory period with color of title to the entire tract. *Held*, that defendant had acquired title to the entire 320 acres. *Marietta Fertilizer Co.* v. *Blair* (Ala. 1911) 56 South. 131.

In the United States, contrary to the law of Engand, it has become well settled that the land, title to which may be acquired by adverse possession, is not necessarily limited in extent to that actually in possession of the claimant during the statutory period. Where one has color of title to a tract of land and enters into actual adverse possession of a part thereof, if such possession continues for the statutory period, he may, generally speaking, acquire title to the whole parcel. In *Jackson* v. *Woodruff*, 1 Cow. 276, 13 Am. Dec. 525, it was held that where the part actually occupied was very small in comparison with the entire tract, title to the whole could not be acquired even though there was color of title. The substance of this holding is to the effect that the force of the actual possession will be extended over that part included in the "color" only where the part not actually occupied is a reasonable appendage to that in actual possession of the claimant. To the same effect are *Chandler* v. *Spear*, 22 Vt. 388; *Hole* v. *Rittenhouse*, 19 Pa. St. 305; *Thompson* v. *Burhans*, 61 N. Y. 52 (Cf. *Munro* v. *Merchant*, 28 N. Y. 9); *Murphy* v. *Doyle*, 37 Minn. 113 (dictum); *Pepper* v. *O'Dowd*, 39 Wis. 538 (under a statute). See also *Turner* v. *Stephenson*, 72 Mich. 409. In several cases, however, this rule has not been applied. *Hicks* v. *Coleman*, 25 Cal. 122, 85 Am. Dec. 103; *Doe d'Lenoir* v. *South*, 32 N. C. 237; *Furgerson* v. *Bagley*, 95 Ga. 516, 20 S. E. 241 (statute). See also *Ellicott* v. *Pearl*, 10 Pet. 412. The principal case places Alabama among the states holding as last stated, thus modifying, or rather explaining *Lawrence* v. *Alabama State Land Co.*, 144 Ala. 524, 41 South. 612, which has been cited as announcing the same rule as announced in *Jackson* v. *Woodruff*, *supra*. See 2 AM. AND ENG. ENCYC. OF L. & P. 537. This matter has been covered by statute in some states. See *Pepper* v. *O'Dowd*, *supra*; *Furgerson* v. *Bagley*, *supra*.

BANKS AND BANKING—PAYMENT OF DEPOSITS ON FORGED CHECKS—LIABILITY—AFFIRMATIVE DEFENSE.—A corporation made a deposit with a bank, payable only on checks signed by the president and the treasurer. The president forged the signature of the treasurer and obtained the deposit on such forgery. The bank did not receive notice of the forgery within one year after the payment and the return of the vouchers. Section 326 of the Negotiable Instruments Law (Consol. Laws 1909, c. 38) provides that, "No bank shall be liable to a depositor for the payment by it of a forged or raised check, unless within one year after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid was forged or

raised." Action was brought against the bank to recover the amount paid on the forged checks. *Held,* that a defense of failure to notify under the provision given above must be pleaded and proved in order to be available, and that it is not a condition precedent to be alleged as a part of a cause of action by a depositor, suing his bank for a deposit depleted by the payment of forged checks, but is in fact a statute of limitations. *Shattuck* v. *Guardian Trust Co. of New York* (1911), 130 N. Y. Supp. 658.

No other case deciding the provision in question has been found . CLARKE, SCOTT, and INGRAHAM, JJ., held it to be a statute of limitations on the ground that in nature it was similar to the statute of frauds, the statute against usury and that against betting and gaming, which have been held to be statutes of limitations, and are not available to a party unless specifically pleaded. *Crane* v. *Powell,* 139 N. Y. 379, 34 N. E. 911; *Porter* v. *Worsmer,* 94 N. Y. 431, 450; *Hamer* v. *Sidway,* 124 N. Y. 538, 548; *Wells* v. *Monihan,* 129 N. Y. 161. MCLAUGHLIN and DOWLING, JJ., were of the opinion that it was more analogous to the provisions in the standard policy of insurance prescribed by the statute that "no action can be maintained upon such policy unless proofs of loss are served within a specified time, which it is settled is a condition precedent to be alleged and proved by the plaintiff."

BANKS AND BANKING — PAYMENT OF CHECK — FORGED INDORSEMENTS. — P. drew a check on his local bank of deposit in favor of R, whose place of business was 48 Walker St., New York. Through mistake he addressed the letter. in which the check was enclosed, to 48 Walker St., Cleveland, Ohio, instead of 48 Walker St., New York. The letter reached Cleveland, and the mail carrier found no one of that name on Walker St. of that city, but found a man whose name was R, on Henry Street, to whom the carrier delivered the letter. He opened it and took possession of the check, and by indorsing the name R on the back thereof obtained the cash from an acquaintance, who indorsed and deposited said check in his bank of deposit in Cleveland. After several indorsements it was presented to the drawee bank, and paid by it, and charged to P's account, it having no knowledge of said mistake in addressing the letter. P brought suit against the drawee bank to recover the amount of the check so charged to his account. *Held,* he was not entitled to recover. *S. Weisberger Co.* v. *Barberton Savings Bank Co.* (Ohio 1911) 95 N. E. 379.

The authorities in this country are uniform in holding that a bank is bound to see that the payee's signature is genuine, and is liable for paying on a forged check. *Jordan Marsh Co.* v. *National Shawmut Bank,* 201 Mass. 397, 87 N. E. 740; *Bank of Brit. North America* v. *Merchants Nat'l Bank,* 91 N. Y. 106; *Trust Co. of America* v. *Hamilton Bank of New York City,* 127 App. Div. 515, 112 N. Y. Supp. 84; *Union Biscuit Co.* v. *Springfield Grocer Co.,* 143 Mo. App. 300, 126 S. W. 996; *Hardy* v. *Chesapeake Bank,* 51 Md. 562, 34 Am. Rep. 325; *West Philadelphia Bank* v. *Green,* 3 Penny. 456; *Hatton* v. *Holmes,* 97 Cal. 208, 31 Pac. 1131; *Henderson Trust Co.* v. *Ragan,* 21 Ky. Law Rep. 346, 52 S. W. 848. The general rule has been qualified. The bank is not liable for paying a check on a forged indorsement, if the depositor is in fault. *Snyder* v. *Corn Exchange National Bank,* 221 Pa. 599. The